

UNRAVELING THE WEB: Mental Health Issues Within the Criminal Justice System

**December 4, 21015
Maricopa County Security Center
Phoenix, Arizona**



OVERVIEW OF RULE 11 & GEI

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Guilty Except Insane

"If you commit a big crime then you are crazy, and the more heinous the crime, the crazier you must be. Therefore you are not responsible, and nothing is your fault."

Peggy Noonan, U.S. writer, newscaster

"I've fully concluded that I was ill..."

Multi-millionaire John du Pont as he apologized for killing Olympic wrestler Dave Schultz on January 26, 1996

WHAT
is
INSANITY?



Historical Overview

1400's Wild Beast Standard:

- Defense had to prove that defendant lacked the minimum understanding of a wild animal or infant.

Daniel M'Naghten

- While attempting to assassinate British Prime Minister, killed his secretary instead.
- Was found not guilty on the grounds that he was insane at the time
- Public outrage followed
- M'Naghten Rule Developed

M'Naghten Rule 1843

In order to establish a defense of insanity:

- Must clearly prove that at the time of committing the act, the accused
 - Was laboring under such a defect of reason, from disease of mind, as not to know the nature and quality of the act he was doing
 - Or, if he did know what he was doing, that he did not know it was wrong.

Irresistible Impulse Test

- Created in response to M'Naghten
- 1st used by Alabama Supreme Court 1887
- Lorena Bobbitt found not guilty under this defense (released after 3 months treatment)

Defendant must establish that he/she was incapable of resisting the urge to commit the crime.

Policeman at your elbow test

Durham Rule 1954

Durham V. United States (case since overruled)
An accused is not criminally responsible
if his unlawful act was the product of
mental disease or defect.

(because of difficulties with implementation,
was rejected by the same court in 1972,
adopting Model Penal Code Standard)

Model Penal Code Standard 1962

A person is not responsible for criminal
conduct where (s)he, as a result of mental
disease or defect, did not possess "substantial
capacity either to appreciate the criminality of
his conduct or to conform his conduct to the
requirements of the law".

- Broader than M'Naghten and Irresistible Impulse

Eric Clark



- 17 years old and all agree mentally ill
- Took keys to brother's truck, drove around a neighborhood for 40 minutes blaring rap music; shot responding officer, fled and hid out for hours, denied crime
- 3 witnesses
 - Friend – testified re: statements about killing a cop
 - 1 expert each side

State by State plus District of Columbia

4 states abolished insanity defense:

Idaho, Kansas, Montana, Utah

1 state uses Durham Test:

New Hampshire

15 states use Model Penal Code

6 states use Modified Version of Model Penal Code

20 states use M'Naghten Rule

5 states use Modified M'Naghten Rule

36 states place burden of proof on Defendant

11 states place burden of proof on State

CO, FL, MA, MI, MS, NJ, ND, NM, OK, TN, WV

ARIZONA 1994

Guilty Except Insane

A.R.S. 13-502

A person may be found guilty except insane if at the time of the commission of the criminal act the person was afflicted with a mental disease or defect of such severity that the person did not know the criminal act was wrong.

13-502 (continued)

A mental disease or defect does not include disorders that result from:

acute voluntary intoxication
withdrawal from alcohol or drugs,
character defects,
psychosexual disorders
impulse control disorders.

13-502 con't

Conditions that do not constitute legal insanity include but are not limited to:

momentary, temporary conditions arising from the pressure of the circumstances

moral decadence

depravity or passion growing out of anger

jealousy

revenge

hatred

other motives in a person who does not suffer from a mental disease or defect or an abnormality that is manifested only by criminal conduct.

13-503 Effect of Drugs or Alcohol

Temporary intoxication resulting from the **voluntary** ingestion, consumption, inhalation or injection of **alcohol**, an **illegal substance** under chapter 34 of this title or other **psychoactive substances** or the **abuse of prescribed medications** does not constitute insanity and is not a defense for any criminal act or requisite state of mind.

13-3991 Detention of defendant during insanity; restoration to sanity

If a defendant is committed to the state hospital for the reason that he is insane or mentally defective to the extent that he is unable to understand the proceedings against him or to assist in his defense, if charged with a crime, or for the reason that he is found insane after conviction and prior to pronouncing sentence, he shall be detained in the state hospital until he becomes sane. When the defendant becomes sane, the superintendent of the state hospital shall give notice of the fact to the sheriff and county attorney of the county. The sheriff shall thereupon, without delay, bring the defendant from the state hospital and place him in proper custody, until he is brought to trial or sentenced, or is legally discharged.

This deals with defendants prior to sentencing, not after they have been sentenced.

13-3993. Examination of defendant pleading not guilty by reason of insanity; privilege inapplicability; reports

- A. In any criminal prosecution in which the defendant has declared the defendant's intent to invoke an insanity defense, on a showing of unequal resources the state shall have the right to nominate and have appointed for examination of the defendant to determine the defendant's mental state the same number of medical doctors and licensed psychologists that will testify on behalf of the defense.
- B. If a defendant in a criminal prosecution refuses to be examined by the state's mental health experts, the court shall preclude the defendant from offering expert evidence of the defendant's mental state at the time of the alleged crime.

13-3993 con't

- C. The privilege of confidential communication between a medical doctor or licensed psychologist and the defendant as it relates to the defendant's mental state at the time of the alleged crime does not apply if any mental disability defense is raised.
- D. If any mental disability defense is raised, both the state and the defendant shall receive prior to the trial complete copies of any report by a medical doctor or licensed psychologist who examines the defendant to determine the defendant's mental state at the time of the alleged crime or the defendant's competency.

13-4506 Examination for purposes of insanity defense

- A. On request of the court or any party, with the consent of the defendant and after a determination that a reasonable basis exists to support the plea of insanity, the mental health expert who is appointed pursuant to 13-4505 shall provide a screening report that includes:
1. The mental status of the defendant at the time of the offense.
 2. If the expert determines that the defendant suffered from a mental disease, defect or disability at the time of the offense, the relationship of the disease, defect or disability to the alleged offense.
- B. If the defendant's state of mind at the time of the offense will be included in the examination, the court shall not appoint the expert to address the issue until the court receives the medical and criminal history records of the defendant.
- C. Within ten working days after the expert is appointed, the parties shall provide any additional medical or criminal history records that are requested by the court or the expert.

13-4508. Privilege

- B. Any evidence or statement that is obtained during an examination is not admissible at any proceeding to determine a defendant's guilt or innocence unless the defendant presents evidence that is intended to rebut the presumption of sanity.

(reports are sealed after trial)

Rule 11.3.f

f. Experts' Reports on Guilty Except Insane Pleas.

(1) If the defendant raises a defense pursuant to A.R.S. 13-502, on request of the court or any party, with the consent of the defendant, and if the offense involves death or serious physical injury that a reasonable basis exists to support the plea, the mental health expert who is appointed pursuant to A.R.S. 13-4505 shall provide a screening report to evaluate competency that includes the provisions of A.R.S. 13-4506.

11.3.f continued

(2) If the defendant's state of mind at the time of the offense will be included in the examination, **the court shall not appoint the expert to address this issue until the court receives the medical and criminal history records of the defendant.**

(3) Within ten working days after the expert is appointed, the parties shall provide any additional medical or criminal history records that are requested by the court or the expert.

11.7.a Privilege

- a. General Restriction. No evidence of any kind obtained under these provisions shall be admissible at any proceeding to determine guilt or innocence unless the defendant presents evidence intended to rebut the presumption of sanity.

caselaw

State v. Christensen, 129 Ariz. 32, 628 P.2d 580 (1981)

Trial court committed error in excluding testimony of psychiatrist that, in his expert opinion, defendant had difficulty dealing with stress and in stressful situations his actions were more reflexive than reflective, in that establishment of character trait of acting without reflection would have tended to establish that defendant acted impulsively, and from such fact jury could have concluded defendant did not premeditate the homicide.

caselaw

State v. Mott, 187 Ariz. 536, 931 P.2d 1046 (1997)

Evidence of defendant's mental disorder short of insanity is inadmissible either as an affirmative defense or to negate *mens rea* element of a crime.

Precluding defendant from introducing psychological testimony to challenge *mens rea* of a crime does not violate due process.

caselaw

Clark v. Arizona, 548 U.S. 735, 126 S.Ct. 2709 (2006)

Arizona's narrowing of its insanity test did not violate due process

Exclusion of evidence of mental illness and incapacity due to mental illness on issue of *mens rea* did not violate due process. (Upholds *Mott* Ruling.)

Clark con't

Clark had 2 defense tactics:

1. insanity defense;
2. rebut prosecution's evidence regarding intentionally and knowingly.

Reviewed *Mott* holding: testimony of a professional psychologist or psychiatrist about a defendant's mental incapacity owing to mental disease or defect was admissible only for its bearing on insanity not on *mens rea*.

Clark con't

3 types of evidence:

- Observation evidence: either by lay or expert witness of what defendant did or said at time of the offense;
- Mental-disease evidence: typically from professional psychologists or psychiatrists based on factual reports, professional observations and tests about defendant's mental disease with features described by the witness;
- Capacity evidence: typically from same experts about defendant's capacity for cognition and moral judgment.

caselaw

State v. Wright, 214 Ariz. 540, 155 P.3d 1064 (App. 2007)

Proffered testimony of defendant's expert witness that defendant did not have mental state necessary to commit offense was inadmissible. (because it wasn't "observation evidence")

"Observation Evidence" to show defendant didn't have the requisite mental state to commit the charged offense, includes evidence of defendant's behavior, statements, and expressions of belief around time of offense.

caselaw

State v. Turrentine, 152 Ariz. 61, 730 P.2d 238 (App. 1986)

State v. Fletcher, 149 Ariz. 187, 717 P.2d 866 (1986)

Placing clear and convincing evidence burden of proof on defendant is not unconstitutional.

caselaw

State V. Fayle, 134 Ariz. 565, 658 P.2d 218 (App. 1982)

Trial court must defer to wishes of Defendant with respect to presentation of insanity defense.

caselaw

State v. Tamplin, 195 Ariz. 246, 986 P.2d 914
(App. 1999)

"Wrong" for purposes of insanity defense should be defined by community standards of morality and not by defendant's subjective belief that he acted "rightly" in committing robbery by obeying "voices" even though he knew his conduct was wrong.

caselaw

State v. Skaggs, 120 Ariz. 467, 586 P.2d 1279
(1978)

Generally, evidence of crimes other than those for which defendant is on trial is not admissible; however, such rule does not apply when defendant raises issue of insanity, and thus previous conduct involving bad acts of defendant is admissible.

caselaw

Austin v. Alfred, 163 Ariz. 397, 788 P.2d 130
(App. 1990)

Expert disclosure rule did not limit required disclosure of name and reports of mental health experts retained by defendant in anticipation of insanity defense to those experts who would testify at trial and who prepared reports in anticipation of testimony.

caselaw

State v. Hurler, 185 Ariz. 199, 914 P.2d 1291 (1996)

GEI is an affirmative defense.

Insanity defense does not vitiate presumption of innocence or negate state's burden of proof against murder defendant; state is still required to prove every element beyond a reasonable doubt and insanity defense does not require defendant to prove or disprove any element of offenses charged.

caselaw

Hurler con't

First and fundamental rule with respect to insanity defense is that any and all conduct of defendant is admissible in evidence; there can be no restrictions, for if specific act does not indicate insanity it may indicate sanity, and it will certainly throw light one way or the other upon the issue.

No single act can be decisive in determining Defendant's sanity or insanity, while on the other hand, any act whatsoever may be significant to some extent.

caselaw

State v. Saters, 196 Ariz. 20, 992 P.2d 612 (1999)

Cannot tell jury about consequences of GEI

caselaw

- State v. Bunting, 226 Ariz. 572, 250 P.3d 1201 (App.2011)
- U.S. v. Shorty, 741 F.3d 961 (9th Cir. 2013)
 - Defendant must waive a jury trial for submission to court on the record

- WHAT
 - TO
 - DO

All that matters is whether
defendant knew behavior was
wrong and wasn't on
drugs!!!!!!!!!!
Look at the police report!

Reasonable Basis

- In cases involving death, threat of death or serious physical injury or threat of such
- Court must find a reasonable basis for the defense
- Once done, court must order an evaluation of Defendant – AFTER records obtained
 - List of doctors included in material
- Either party may also hire their own doctor
- Burden of Proof on Defendant

- Cases not involving death, threat of death, serious physical injury or threat of such
- No reasonable basis is necessary
- Court appoints expert
- Either party may hire their own doctor
- Burden still on defendant

In the Beginning

Once you know defense is using insanity, start collecting all evidence you can and provide to Doctor once appointed.

past police reports
past pre-sentence reports
school records
DOC records
jail tapes
(defense is only going to provide what is good for them)

Mental Illness ≠ Insanity

- Is an affirmative defense
- Defendant must approve defense
- Defendant must cooperate with state's doctor
- Burden on defendant
- State must still prove all elements of underlying offense

DISCLOSURE

- Defendant **MUST** disclose all records
 - All privacy rights are waived
 - *Styers v. Superior Court*, 161 Ariz. 477, 779 P.2d 352 (1989)

Records

- Correctional Health Services (CHS)
 - Including tank orders
- Restoration to Competency (RTC)
- DOC
- Magellan, Value Option, any mental health
- Prior convictions
- Prior PSR
- Jail Calls
- Jail Reports/observations of detention officers

Best Records

- Police Report
 - Defendant's statements
 - Admit it was wrong
 - Apologize
 - Invoke his rights
 - Defendant's behavior
 - Planning
 - Escape
 - Video/Audio Interview of Defendant

Best Records

- Witness Statements
- Drugs or alcohol involved?
- Anger or jealousy involved?

Defense Expert

- You are entitled to
 - All reports from any doctor that examined him
 - Not just the ones testifying
 - Use jail visitation to know who went
 - Doctor's Report, Notes, Testing Material, Test Protocol, Raw Data
- Can get a protective order if necessary from the court, but they must disclose everything

TRIAL

Remember: the worst you can do is what they want you to agree to in the first place!

- Must prove all elements
- Defendant's burden (clear and convincing)
- May use all prior bad acts
- Get all evaluations and use any evidence

Submission to the Court

- Not a plea bargain!!!
- Must provide
 - Police reports
 - Mental health record
- Court must make specific findings
 - Sample minute entries in material

WHAT
HAPPENS
NEXT?

A.R.S. 13-3994

A. A person who is found guilty except insane pursuant to 13-502 shall be committed to a secure state mental health facility under the department of health services for a period of treatment.

A.R.S. 13-3994

B. If the criminal act did not cause the death or serious physical injury of or the threat of death or serious physical injury to another person, the court shall set a hearing date within **75 days** after commitment to determine if the person is entitled to release from confinement or if person meets civil commitment criteria.

A.R.S. 13-3994

At the hearing:

- If person proves by clear and convincing evidence that the person no longer suffers from a mental disease or defect and is not dangerous, the court shall order release and commitment shall terminate.
- *** Court shall consider the entire criminal history of the person and shall not order release if determines a propensity to reoffend.

A.R.S. 13-3994

At the hearing

- If court finds that defendant is civilly committable, orders county attorney to file for the civil commitment and the person's commitment pursuant to 13-502 terminates.

A.R.S. 13-3994

If the court finds that the criminal act of the person committed caused the death or serious physical injury of or the threat of death or serious physical injury to another person, the court shall place the person under the jurisdiction of the psychiatric security review board for the presumptive term. (this board is responsible for supervising defendant during this time)

A.R.S. 13-3994

- The court shall state the beginning date, length and ending date of the board's jurisdiction over the person.
- Jurisdiction is equal to presumptive sentence.

A.R.S. 13-3994

- Person under the PSRB's jurisdiction is not entitled to a hearing before the board earlier than **120 days** after the person's initial commitment.

caselaw

State v. Bomar, 1999 Ariz. 472, 19 P.3d 613
(App. 2001)

Finding of GEI is not a criminal conviction.

Defendant receives no pre-incarceration credit for GEI sentence.

caselaw

State v. Heartfield, 196 Ariz. 407, 998 P.2d 1080 (App. 2000)

Court lacks authority to order GEI defendant to pay restitution.

caselaw

State v. Flynt, 199 Ariz. 92, 13 P.3d 1209 (App. 2000)

Phrase "substantial threat of death or physical injury" was not limited to conduct that involved substantial "actual" but also "apparent" threat of death or physical injury.

caselaw

Blake v. Schwartz, 202 Ariz. 120, 42 P.3d 6 (App. 2002)

Upheld constitutionality of 120 day waiting period before release hearing could be requested by defendant because the medical director could request an earlier hearing.

AT PSRB HEARING

<p>Mentally III/ Dangerous</p> <p>Stays at ASH</p>	<p>Mentally III/ Not Dangerous (stable remission)</p> <p>Released, retain jurisdiction</p>
<p>Not Mentally III/ Not Dangerous</p> <p>Released, retain jurisdiction (consider entire criminal history and propensity to reoffend)</p>	<p>Not Mentally III/ Dangerous</p> <p>??????</p> <p>Is a provision for sending to DOC, not used yet and unclear how it would work</p>
